

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

D.T., by and through his parents and guardians, K.T. and W.T., individually, on behalf of similarly situated individuals, and on behalf of the NECA/IBEW Family Medical Care Plan.

Plaintiff,

V.

NECA/IBEW FAMILY MEDICAL CARE PLAN, THE BOARD OF TRUSTEES OF THE NECA/IBEW FAMILY MEDICAL CARE PLAN, SALVATORE J. CHILIA, ROBERT P. KLEIN, DARRELL L. MCCUBBINS, GEARY HIGGINS, LAWRENCE J. MOTER, JR., KEVIN TIGHE, JERRY SIMS, AND ANY OTHER INDIVIDUAL MEMBER OF THE BOARD OF TRUSTEES OF NECA/IBEW FAMILY MEDICAL CARE PLAN

Defendants

NO. 2:17-cv-00004-RAJ

ORDER

- (1) FINALLY APPROVING SETTLEMENT AGREEMENT;
- (2) APPROVING DISBURSEMENTS PURSUANT TO THE SETTLEMENT AGREEMENT; APPROVING PAYMENT OF ATTORNEYS FEES, LITIGATION COSTS AND CASE CONTRIBUTION AWARD;
- (3) ESTABLISHING A LATE CLAIM DEADLINE DUE TO COVID-19;
- (4) REQUIRING NOTICE OF THE ARBITRATION PROCESS TO CLAIMANTS; AND
- (5) ORDERING FINAL REPORT ON DISBURSEMENT OF QUALIFIED SETTLEMENT FUND

I. BACKGROUND

On February 2, 2021, this Court preliminarily approved the Settlement Agreement in this matter and certified the Settlement Class. Dkt. No. 197. The Court directed the Claims Processor to issue notice to the Settlement Class. *Id.*, ¶4. Class Notices and Claim

1 Form Materials were mailed in accordance with the Class Notice procedures beginning
 2 April 26, 2021. . Dkt. No. 199, ¶¶4-5 The Claims Processor updated Notice recipients'
 3 addresses when the notices were returned and re-mailed the notices to all updated
 4 addresses located. Fortunato Decl., ¶6.

5 Class counsel also established a settlement web page within 30 days of the date of
 6 the February 12, 2021 Order that contained the Class Notice, the Claim Form Materials
 7 and key filings in the litigation, including the Motion for Attorney Fees, Litigation Costs
 8 and Contribution Award. Hamburger Decl., ¶6; see
 9 <http://www.symslaw.com/dtsettlement> (last visited 9/27/21). Defendants provided
 10 the required notice under the Class Action Fairness Act ("CAFA"). Hamburger Decl.,
 11 *Exh. 4.*

12 The Order also provided that class members who wished to comment on or object
 13 to the proposed Agreement were required to do so by September 24, 2021. Class
 14 members were informed of their rights and of this deadline in the notices that were
 15 mailed to them and via links on Class counsel's website.

16 The Order further scheduled a final settlement hearing, which was held on
 17 October 8, 2021, to consider objections and comments by class members and to determine
 18 whether the proposed Agreement is fair, reasonable, adequate and should be approved
 19 by the Court.

20 II. FINDINGS

21 1. The parties reached a Settlement Agreement providing prospective
 22 coverage of medically necessary Applied Behavior Analysis (ABA) therapy and
 23 Neurodevelopmental Therapies ("NDT") (speech, occupational and physical therapies)
 24 to treat certain mental health conditions that Defendants considered to be
 25 "Developmental Delays." See Dkt. No. 194-1, ¶¶6.1-6.3.
 26

1 2. The Settlement Agreement also establishes a Settlement Amount in a
2 notational account of \$1,700,000. Under the terms of the Agreement, this fund is to be
3 used to pay retrospective claims for unreimbursed ABA and NDT services to treat
4 qualifying mental health conditions during the class period as well as alternative health
5 insurance purchased by class members to mitigate their damages. Any funds remaining
6 in the Settlement Amount after these payments will be returned to Defendants.

7 3. The Agreement provides that the Defendants' Benefit Office acts as the
8 Claims Processor to receive and process claims. The Agreement provides for an
9 arbitration process. *See Settlement Agreement, § 8.3.6.*

10 4. The Court's Order required the Claim Processor to mail court-approved
11 notices and claim forms, to class members by direct mail. The notices informed class
12 members that they had an opportunity to object or submit comments to the Court
13 regarding the proposed Agreement and that they must do so in writing by September 24,
14 2021.

15 5. Consistent with the Order, Defendants provided notices and materials
16 required under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b).

17 6. Class Notices were mailed to 1,890 participants and beneficiaries in the
18 Plan. The Claims Processor reports that it searched for updated addresses for notices
19 that were returned and resent the Class Notice to any updated addresses found. *See*
20 Fortunato Decl., ¶6.

21 7. No class members objected to the Settlement Agreement. No class
22 members submitted comments.

23 8. A total of 129 claims were received by the Claims Processor by July 30,
24 2021. The total value of these claims, before they are adjudicated by the Claims
25 Processor, is approximately \$351,681.46. The Claims Processor anticipates authorizing a
26 total payment of \$277,967.74.

1 9. Of the 129 claims received, 18 of the claims were denied for at least some
 2 portion of the claimed amount. Fortunato Decl. ¶12. See Hamburger Decl., ¶10, *Exh.* 5.
 3 The Claims Processor and Defendants agree to provide notice of the arbitration process
 4 to Claimants with denied claims. Hamburger Decl., *Exh.* 6.

5 10. The Claims Processor and Defendants agree to include notice about the
 6 arbitration process to Claimants whose claims have been approved and are receiving
 7 reimbursement from Defendants.

8 **III. CONCLUSIONS**

9 11. Rule 23(e) provides that “a class action shall not be dismissed or
 10 compromised without the approval of the court....” Compromise and arbitration of
 11 complex litigation is encouraged and favored by public policy. *See Simula, Inc. v. Autoliv,*
 12 *Inc.*, 175 F.3d 716, 719 (9th Cir. 1999).

13 12. A presumption of fairness and adequacy attaches to a class action
 14 settlement reached in arm’s-length negotiations by experienced class counsel after
 15 meaningful discovery. *See, e.g., Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625
 16 (*9th Cir. 1982*); *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 209, 35 P.3d 351
 17 (*2001*).

18 13. Federal Rule of Civil Procedure 23(e)(2) requires a reviewing court to find
 19 that a settlement “is fair, reasonable, and adequate” before granting final approval of a
 20 class settlement. The court must consider whether:

- 21 (A) the class representatives and class counsel have adequately
 22 represented the class;
- 23 (B) the proposal was negotiated at arm’s length;
- 24 (C) the relief provided for the class is adequate, taking into account:
 25 (i) the costs, risks, and delay of trial and appeal;

1 (ii) the effectiveness of any proposed method of distributing relief to
2 the class, including the method of processing class-member claims;

3 (iii) the terms of any proposed award of attorney's fees, including
4 timing of payment;

5 (iv) any agreement required to be identified under Rule 23(e)(3), [which
6 requires the parties seeking approval to file a statement identifying any
7 agreement made in connection with the proposal]; and

8 (D) the proposal treats class members equitably relative to each other.

9 Fed. R. Civ. P. 23(e)(2).

10 14. Based upon these factors, the Court finds that the Agreement is fair,
11 reasonable, and in the best interests of the class. The requirements of Fed. R. Civ. P.
12 23(e)(2) have been satisfied. With the amended notice requirements for class members
13 who submitted claims specified in this Order, due process requirements have also been
14 satisfied.

15 15. Specifically, the Court concludes that the Agreement was the result of
16 arm's-length bargaining. It was reached after sufficient discovery and other litigation
17 activity. Although the class had a strong likelihood of success, the key legal issues in the
18 case had not been adjudicated, such that there was risk in proceeding with the litigation.
19 A settlement in which class members will be able to continue to obtain coverage of
20 medically necessary ABA and NDT services in the future, and reimbursement for costs
21 incurred to obtain medically necessary ABA and NDT services in the past achieves the
22 goals of the litigation. There is no evidence of collusion between the parties, and the
23 agreement was reached in good faith.

24 16. The class was provided with adequate notice, and due process has been
25 satisfied in connection with the distribution of the class notice. No objections to the
26 proposed Agreement were received by the Court or any of the parties.

17. Adequate notice to class members about their eligibility for reimbursement under the Settlement Agreement was achieved, and due process is met in the settlement claims process with the above agreements.

IV. PAYMENTS TO CLASS MEMBERS

18. Upon the occurrence of the conditions set forth in Section 2 of the Settlement Agreement, the Court authorizes the payment of approved class member claims. The Court authorizes the disbursement of these funds from the Settlement Amount.

V. ATTORNEY FEES AND LITIGATION COSTS

19. Class counsel are entitled to their actual lodestar (hours x rate) attorney fees and litigation costs up to \$850,000 under the terms of the Settlement Amount, subject to Court approval. That approval is granted, and the Court awards \$850,000 as attorney fees to Class counsel to be paid by Defendants.

20. No objections were received to Class counsel's fee request or the request for reimbursement of litigation costs.

21. Upon the occurrence of the conditions set forth in Section 2 of the Settlement Agreement, Defendants are ordered to pay the approved attorney fees and litigation costs to class counsel.

VI. CASE CONTRIBUTION AWARD

22. Upon the occurrence of the conditions set forth in Section 2 of the Settlement Agreement, D.T. by and through his parents K.T. and W.T. are awarded a case contribution award in the sum of \$25,000 as described in the Settlement Agreement, subject to the Court's approval. That approval is granted and the Defendants are ordered to pay the approved case contribution award to Plaintiff D.T. as required by the Settlement Agreement.

23. No objections were received to the request for case contribution awards.

1 **VII. AUTHORIZATION OF LATE-FILED AND EMAILED CLAIMS**

2 24. The Claims Processor rejected four claims because they were filed late, or
 3 were properly and timely-filed but instead emailed to Class counsel who forwarded the
 4 email to the Claims Processor and Defense counsel. The maximum value of the four
 5 claims is under \$10,000. Adjudication and payment of these four claims will not
 6 prejudice any other Class member.

7 25. The Court orders the Claims Processor to accept all late-filed or emailed
 8 claims through September 30, 2021. The Claims Processor is ordered to adjudicate those
 9 claims as if they were timely filed and received via U.S. mail.

10 **VIII. NOTICE OF ARBITRATION PROCEDURE**

11 26. The Claims Processor is ordered to provide written notice about the
 12 availability of the Settlement Agreement's arbitration process to all class members who
 13 submitted claims and that they must submit written notice of their intention to invoke
 14 the arbitration process to both Defendants and Class counsel within thirty (30) days of
 15 the date of the notice, via email and/or U.S. Mail.

16 27. The Claims Processor and Class counsel shall reach agreement on a
 17 reasonable manner for class members to access the arbitration process. If the Claims
 18 Processor and Class counsel cannot reach agreement, then this issue shall be decided by
 19 the arbitrator pursuant to the Settlement Agreement, ¶8.3.6.

20 **IX. CLASS COUNSEL'S FINAL REPORT, DISMISSAL
AND REVERSION TO DEFENDANTS**

21 28. Class counsel shall submit a final report to the Court regarding claims
 22 processing and disbursement of funds from the Settlement Amount by no later than
 23 30 days after the Claims Processor processes and pays all valid claims, including any late
 24 filed or emailed Claims authorized for payment by the Court, and any claims ordered to
 25 be paid as a result of the arbitration process. The Report shall detail the payment of
 26 court-awarded attorney fees and litigation costs, case contribution award, payment of

1 claims, and the amount of funds anticipated to revert to Defendants, as well as any other
2 activities necessary to close the Settlement Amount. At the same time, Class counsel
3 shall file a proposed Order of Dismissal.

4 29. All remaining funds, if any, in the Settlement Amount shall be returned to
5 Defendants within 60 days of the entry of the Order of Dismissal, and consistent with
6 the requirements of the Settlement Agreement.

7 **X. ORDER**

8 It is hereby ORDERED that:

9 1. The Settlement Agreement is approved as fair, reasonable and adequate
10 under Fed. R. Civ. P. 23(e)(2), and its terms shall bind all class members.

11 2. Class counsel is awarded attorney fees and litigation costs, as set forth
12 above. These amounts are ordered to be paid to Class counsel by Defendants.

13 3. The Claims Processor is ordered to accept, adjudicate and pay all late-filed
14 claims and emailed claims received by September 30, 2021, as if the claims were timely
15 filed and received via U.S. Mail.

16 4. The Claims Processor is ordered to provide written notice regarding the
17 arbitration process, consistent with this Order and the terms of the Settlement
18 Agreement, to all class members who submitted claims. The Claims Processor must
19 reach agreement with Class counsel on the manner in which class members may access
20 the arbitration process. If the Claims Processor and Class counsel are unable to reach
21 agreement on this issue, then the Arbitrator shall decide, pursuant to Section 8.3.6 of the
22 Settlement Agreement.

23 5. The Claims Processor is ordered to make payments and distribute checks
24 to Class members and the named Plaintiff in accordance with the Agreement and this
25 Order, as approved by the Claims Processor or on appeal by the Arbitrator. These
26 amounts are authorized to be paid from the Settlement Amount.

1 6. Case contribution award of \$25,000 to Plaintiff D.T., by and through his
2 parents K.T. and W.T., as set forth in the Agreement is approved, and the Claims
3 Processor is ordered to distribute that sum from the Settlement Amount to the parents
4 of D.T.

5 7. Class counsel is ordered to submit a Final Report in accordance with the
6 Agreement and this Order.

7 8. The Court shall retain jurisdiction over this matter until the Settlement
8 Amount is fully disbursed and an Order of Dismissal is entered.

It is so ORDERED this 8th day of October, 2021.



Jim R. Blint

JAMES L. ROBART
United States District Judge